



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMse13091445

██████████,
Complainant,

v.

TRI LAKES TAVERN,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On September 9, 2013, ██████████ ("Complainant") filed a Complaint with the Commission against Tri Lakes Tavern ("Respondent") alleging discrimination on the basis of sex and sexual harassment in violation of ██████████ the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter.

An investigation has been completed. Both parties have been given the opportunity to submit evidence. Based upon a full review of the relevant files and records and the final investigative report, the Deputy Director now finds the following:

The issue presented to the Commission is whether Respondent sexually harassed Complainant. In order to prevail, Complainant must show that: (1) she was subjected to unwelcome sexual actions or comments based on her sex; (2) the conduct was sufficiently severe or pervasive as to create a hostile work environment; and (3) Complainant made it known that the comments and behaviors were unwelcome; and (4) Respondent failed to take corrective action.

By way of background, Complainant worked as a bartender for Respondent. During the course of her employment, Complainant and witness testimony confirms that the male owner, ██████████, made sexual advances toward her. Specifically, Mr. ██████████ grabbed Complainant's buttocks and breasts on a daily basis and made comments such as "this is mine now" while fondling her. Complainant also alleges that Mr. ██████████ would lean into her with his front pressed against her back and gyrate on her backside as well as chase her around the bar



swatting her buttocks. On another occasion, Mr. [REDACTED] told customers that “her fine ass and tits are the only reason I keep her around” and on another occasion, he walked up to Complainant and grabbed her breasts with two hands saying “very nice, these are why I hired you.” Witness testimony also states that he heard the owner make a comment about a pregnant employee stating “how do you think she got this job,” implying that he was the father of the employee’s child. Both Complainant and the witness reported the harassment to the owner’s wife who responded by saying “This is just [REDACTED].” Ultimately, nothing was done about the harassment and Complainant was terminated after she continued to complain about her treatment.

Although Respondent contends it terminated Complainant because she stole money from the registers and received a DUI resulting in the termination of her liquor license, Complainant denies these allegations. Moreover, Respondent failed to provide evidence indicating that it investigated the allegations of theft or that Complainant’s license was suspended. Rather, the evidence shows that Complainant’s hours were reduced after she continually complained about the conditions of her employment. While Respondent provided a copy of its harassment policy, Complainant denies having knowledge of the policy and there is a question whether the policy existed at the time of Complainant’s employment. Moreover, Respondent failed to provide any evidence showing when the policy was created, whether Complainant received a copy of the policy, or when the policy was put into effect. As such, and based upon the foregoing, Respondent’s rationale for terminating Complainant is unworthy of credence and likely amounts to pretext for unlawful discrimination on the basis of gender.

There is sufficient evidence to believe that Respondent sexually harassed Complainant on the basis of gender. Respondent’s behavior, actions, and comments toward Complainant are sufficiently egregious to rise to the level of severe or pervasive required to create a hostile work environment. Moreover, Complainant and a witness complained to the owner’s wife about the comments and behavior but nothing was done. Therefore, there probable cause exists to believe that an unlawful discriminatory practice occurred in this instance.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission’s Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

February 17, 2014

Date

Akia A. Haynes

Akia A. Haynes, Esq.

Deputy Director

Indiana Civil Rights Commission